MOTION FILED

FEB 2 2 2000

(3)

No. 99-1212

In The Supreme Court of the United States

LYNDON H. LAROUCHE, JR., et al.,

Appellants,

v.

DONALD L. FOWLER AS CHAIRMAN, DEMOCRATIC NATIONAL COMMITTEE, et al.,

Appellees.

On Appeal from the United States District Court for the District of Columbia

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF APPELLANTS AND BRIEF *AMICUS CURIAE* OF DEMOCRATIC PARTY OFFICIALS AND MEMBERS IN SUPPORT OF APPELLANTS

James R. Mann
Counsel of Record
102 West Stone Avenue
Greenville, SC 29601
(864) 271-2992
Fax: (864) 271-2999

Counsel for Amicus Curiae

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

2000

No. 99-1212

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

LYNDON H. LAROUCHE, JR., ALEX D. PROMISE, CHARLES SHAW, DELORES WHITAKER, NATHANIEL SAWYER, JOEL DEJEAN, ELOI MORALES, AND MARIA ELENA LEYNA-MILTON,

Appellants,

v.

DONALD L. FOWLER AS CHAIRMAN, DEMOCRATIC NATIONAL COMMITTEE, JAMES L. BRADY AS CHAIRMAN, LOUISIANA DEMOCRATIC PARTY, LOUISIANA DEMOCRATIC PARTY, LOUISIANA DEMOCRATIC STATE CENTRAL COMMITTEE, SUE WRENN, AS CHAIRMAN VIRGINIA DEMOCRATIC PARTY, KENNETH GEROE, AS CHAIR OF THE VIRGINIA 2nd CONGRESSIONAL DISTRICT CAUCUS, VIRGINIA DEMOCRATIC PARTY, WILLIAM WHITE, AS CHAIRMAN TEXAS DEMOCRATIC PARTY, TEXAS DEMOCRATIC PARTY, TEXAS STATE DEMOCRATIC PARTY EXECUTIVE COMMITTEE, SAMUEL COPPERSMITH AS CHAIRMAN ARIZONA DEMOCRATIC PARTY, ARIZONA DEMOCRATIC PARTY, ARIZONA STATE DEMOCRATIC PARTY COMMITTEE,

Appellees.

MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

Pursuant to rule 37.2(b) of the U.S. Supreme Court, officials and members of the Democratic Party[1] move this Court for leave to file an *amicus curiae* brief in support of the appellants in this case.

Counsel for the appellants has consented to the filing of this brief. A request to consent to the filing of this brief, has been sent to all counsel for Appellees, but no response has been received.

The interest of the movants is set forth in the accompanying brief.

For the foregoing reasons, we move this court for leave to file the accompanying *amicus curiae* brief in support of Appellants.

Respectfully submitted,

James R. Mann
Counsel of Record
102 West Stone Avenue
Greenville, S.C. 29601
(864) 271-2992
Fax: (864) 271-2999

---

[1] A list of those officials and members of the Democratic Party is appended to the accompanying brief.

Table of Contents

Page

Motion for Leave to File a Brief *Amicus Curiae* in Support of Appellants i

Table of Authorities iv

Interest of *Amicus Curiae* 2

Summary of the Argument 3

Argument

The First Amendment Does Not Exempt the Democratic Party from Section 5 of the Voting Rights Act 5

Conclusion 10

Table of Authorities

Page

Cases:

Anderson v. Celebreeze, 460 U.S. 780 (1987) 9
Bullock v. Carter, 405 U.S. 134 (1972) 9
Cousins v. Wigoda, 419 U.S. 477 (1975) 7, 8
Democratic Party of U.S. v. Wisconsin, ... 8
Fulani v. Brady, 935 F.2d 1324 (D.C. Cir. 1991) 9
Grovey v. Townsend, 295 U.S. 45 (1935) 6
Morse v. Republican Party of Virginia,
517 U.S. 186 (1996) 6, 7
Nixon v. Condon, 286 U.S. 73 (1932) 6
Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947) 7
Smith v. Allright, 321 U.S. 649 (1944) 6
Terry v. Adams, 345 U.S. 461 (1953) 6, 8
Williams v. Rhodes, 393 U.S. 23 (1968) 9

Constitution, Statutes, and Regulations:

U.S. Constitution:
Amendment XIV 4, 6
Amendment XV 4, 6

Voting Rights Act of 1965, 42 U.S.C. 1973 *et seq.*
§ 5, 42 U.S.C. 1973c ..... *passim*

Other Sources:

1996 Democratic Party Delegate Selection Rule 4 8

No. 99-1212

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

LYNDON H. LAROUCHE, JR., ALEX D. PROMISE, CHARLES SHAW, DELORES WHITAKER, NATHANIEL SAWYER, JOEL DEJEAN, ELOI MORALES, AND MARIA ELENA LEYNA-MILTON,

Appellants,

v.

DONALD L. FOWLER AS CHAIRMAN, DEMOCRATIC NATIONAL COMMITTEE, JAMES L. BRADY AS CHAIRMAN, LOUISIANA DEMOCRATIC PARTY, LOUISIANA DEMOCRATIC PARTY, LOUISIANA DEMOCRATIC STATE CENTRAL COMMITTEE, SUE WRENN, AS CHAIRMAN VIRGINIA DEMOCRATIC PARTY, KENNETH GEROE, AS CHAIR OF THE VIRGINIA 2nd CONGRESSIONAL DISTRICT CAUCUS, VIRGINIA DEMOCRATIC PARTY, WILLIAM WHITE, AS CHAIRMAN TEXAS DEMOCRATIC PARTY, TEXAS DEMOCRATIC PARTY, TEXAS STATE DEMOCRATIC PARTY EXECUTIVE COMMITTEE, SAMUEL COPPERSMITH AS CHAIRMAN ARIZONA DEMOCRATIC PARTY, ARIZONA DEMOCRATIC PARTY, ARIZONA STATE DEMOCRATIC PARTY COMMITTEE,

Appellees

On Appeal from the United States District Court for the District of Columbia

BRIEF *AMICUS CURIAE* OF DEMOCRATIC PARTY OFFICIALS AND MEMBERS IN SUPPORT OF APPELLANTS

INTEREST OF *AMICUS CURIAE*

Pursuant to Rule 37.2 of this Court, the appended list of Democratic Party Officials and Members respectfully submit this brief *amicus curiae* in support of Appellants. Appellants have consented to the filing of this brief. Consent to file this brief has not been granted by the Appellees.

As members and officials of the Democratic Party, we have a strong interest in the outcome of this case. Throughout our nation's history, minority voters have been victims of discrimination perpetrated under many rubrics, including the employment of Democratic Party rules and procedures. As officials and members of the Democratic Party, we have looked to the Voting Rights Act of 1965 as a protection from such discriminatory rubrics, even when perpetrated by officials of our own party.

This case strikes at the heart of the electoral process itself: the right to vote and the right to have that vote counted. An election has no meaning, if either a state or a statutorily sanctioned political party can unilaterally nullify the votes cast in that election. Contrary to the argument of the Democratic National Committee, the Democratic Party is not a mere private club, with an absolute right to exclude

anyone. The Party rules at issue in this case impact the rights of candidates and voters in elections and the Party's function as a public institution that is an integral part of the electoral machinery of every state in the nation. If our party changes its electoral rules for the presidential nominating process or for primary processes in any state, the Party should have no hesitancy in submitting those rules for preclearance under Section 5 of the Voting Rights Act. After all, it was our party which fought for passage of these very provisions of the Act after years of countenancing the very practices which the Voting Rights Act attacks. Section 5 stands as a bulwark against any practices which exclude minorities from the electoral process, whether formulated by the Democratic Party, the Republican Party, or any other party which is similarly situated to control the nomination of major candidates for public office, including the most important office, that of President of the United States. Accordingly, this case has substantial public interest. We believe our perspective will complement the arguments of Appellants and aid the Court in its consideration of the issues.

SUMMARY OF ARGUMENT

If the history of the efforts to end discrimination in voting in the United States tells us anything, it is that those who want to impede the right of some citizens to vote, will resort to many different stratagems and devices to accomplish that result. For nearly a century, non-white voters were presented with one roadblock after another in their efforts to exercise their right to vote. In some cases, states passed laws that banned blacks from voting in certain elections. When the federal courts outlawed such obvious violations of the 15th Amendment, new methods were designed to prevent blacks from voting. One of the most

successful methods was to shift the control of elections from the states, which were subject to the plain terms of the 14th and 15th Amendments, to the Democratic Party, which, it was argued, had an inalienable First Amendment right to define itself as all white. The *White Primary Cases* document the history of this arrogant and abusive defiance of the U.S. Constitution.

To end the seemingly endless resourcefulness through which racial discrimination was being perpetuated, Congress, after the extraordinary efforts of President Lyndon Baines Johnson, passed the Voting Rights Act in 1965. Section 5 of the Act requires that *any* change in voting be precleared for approval, in those jurisdictions that have had a history of discrimination. In 1996, then Democratic National Committee Chairman Donald Fowler issued an edict ordering all state Democratic Parties to disregard all votes cast for Lyndon H. LaRouche, Jr., in the Democratic Party primaries for President of the United States. Fowler's order and its subsequent implementation, was not precleared by either the Democratic National Committee, or the Democratic Parties in the covered jurisdictions of Virginia, Louisiana, Texas, and Arizona. According to the pleadings and legal arguments in the court below, the state parties were coerced into implementing Chairman Fowler's edict, despite obvious non-compliance with the Voting Rights Act. The state parties were threatened that their delegations would not be seated at the Democratic National Convention if the votes of Democratic voters for LaRouche and the minority delegates pledged to him were honored. The effect of Fowler's order and its implementation was to disenfranchise minority voters in those states who voted for LaRouche or minority delegate candidates committed to him and to deny the plaintiffs in this case the right to be a candidate for office.

The district court's decision creates an obvious

loophole in the Voting Rights Act, by exempting National Party rules from preclearance requirements, when the DNC has the power to coerce state parties in covered jurisdictions to implement such changes.. By characterizing as a merely private matter, rules changes and actions that effect the electoral process over which the Democratic Party has complete control, the district court has taken us back to the bad old days of the Jaybird primaries of Ft. Bend County, Texas.

ARGUMENT

THE FIRST AMENDMENT DOES NOT EXEMPT THE DEMOCRATIC PARTY FROM SECTION 5 OF THE VOTING RIGHTS ACT

Our Party's full support of civil rights for all citizens is a relatively recent event in our history. Few individuals who support civil rights and know their history would want to be associated with our party's stand on these issues, prior to the Presidency of Franklin Delano Roosevelt. Even after President Roosevelt, sections of our Party continued to advocate racial separatism and inequality. This painful history includes a long chapter in which the southern Democratic Parties sought to avoid the legal and constitutional prohibitions against racial discrimination by claiming that the Democratic Party was a mere private aggregate of individuals akin to a private club. Too many Democrats, fearful of losing votes and elections, tolerated these practices.

The *White Primary Cases* detail how the Jaybird Democratic clubs in Texas and similar private associations were created by southern Democrats in order to pretend that the Party was not a state actor subject to the provisions of the

14th and 15th Amendments. Yet, the Democratic Party, disguised as a "private club", simultaneously controlled all the actual levers to political power. *Morse v. Republican Party of Virginia*, 517 U.S., 186, pp. 192-193, 204-205 (1996). As was noted in *Terry v. Adams*, 345 U.S. 461, 469 (1953):

> Quite evidently the Jaybird Democratic Association operates as an auxillary of the local Democratic Party organization, selecting its nominees and using its machinery for carrying out an admitted design of destroying the weight and effect of Negro ballots in Fort Bend County. To be sure, the Democratic Primary and the general election are nominally open to the colored elector. But his must be an empty vote cast after the real decisions are made.

It was claimed that these private Democratic clubs could exclude minorities because as private associations they had an absolute First Amendment right to define themselves and exclude whoever they wished. This radical view of the First Amendment was fully articulated by Mr. Justice McReynolds in *Nixon v. Condon,* 286 U.S. 73, 104 (1932) where he argued that it was "essential to free government" and in no sense evil because "white men may organize" "Blacks may do likewise. A woman's party may exclude males." In *Grovey v. Townsend,* 295 U.S. 45 (1935), the Supreme Court fully endorsed this reasoning and allowed the White Primary system to continue. Our courts did not finally repudiate the "private club" rationale until equitable ideas prevailed over artificial legal constructs in *Smith v. Allright*, 321 U.S. 649 (1944), *Terry v. Adams*, 345 U.S., 461 (1953),

and Terry's predecessor, *Rice v. Elmore*, 165 F.2d 387 (4th Cir. 1947). *Rice* instructed the Democratic Party of South Carolina that the fundamental error in their position consisted:

> in the premise that a political party is a mere private aggregation of individuals, like a country club, and the primary is a mere piece of party machinery . . . the party may, indeed, have been a mere private aggregation of individuals in the early days of the Republic, but with the passage of years political parties have become in effect state institutions, governmental agencies through which sovereign power is exercised by the people.

Rice v. Elmore, 165 F.2d at 389.

It is unfortunate that our party did not fully embrace the cause of equal justice for all and with it, the idea of doing right no matter what the apparent consequences for pragmatic politics, until after the shameful episode in which the Mississippi Freedom Democratic Party was excluded from our 1964 convention. The exclusion of the Mississippi Freedom Democrats led Representative Jonathan Bingham to make absolutely clear on the Congressional Record in 1965 that in passing the Voting Rights Act, Congress fully intended to bring the electoral nominating practices of political parties under its coverage. *Morse*, 517 U.S. at 208, 236, Hearings Before the Committee on the Judiciary, H.R. 6400, March 25, 1965 pp. 456-457. As Justice Breyer stated in *Morse*, anything less than Voting Rights Act coverage of party nominating activities would "open a loophole in the statute the size of a mountain, *Morse*, 517 U.S. at 235.

In *Cousins v. Wigoda*, 419 U.S. 477 (1975) and

Democratic Party of U.S. v. Wisconsin, 450 U.S. 107 (1981, our party argued that its rules governing the nominating process should supersede state law when state law allowed Republicans to vote in Democratic Party primaries (*Democratic Party of U.S. v. Wisconsin)* or when state law allowed a delegation to be seated at the Democratic Party convention which did not include sufficient minority participation under our Rules promoting an open party (*Cousins*). The Democratic National Committees' use of those precedents in this case seriously distorts them. Those cases do not stand for the proposition that the Democratic National Committee's Chairman may nullify minority votes in a Democratic primary election because he does not like the politics of the candidate chosen by the minority voters. Those cases also do not stand for the proposition that the First Amendment grants more protection to the institutionalized and publicly-funded Democratic Party than it does to the minority and other voters who belong to that Party. In fact, the actions of Chairman Fowler against Appellants LaRouche and minority voters committed to his candidacy, are directly contrary to our Party's rules calling for an Open Party and stating that discrimination on grounds of philosophical viewpoint are strictly forbidden. See, e.g., 1996 Democratic Party Delegate Selection Rule 4 set forth in the Appendix to Appellants' Brief.

The changes in voting and candidacy requirements in this case effect the basic process by which the President of the United States is elected. The district court's endorsement of the DNC's position that the President of the United States is nominated in a purely private process, free from the results of state-authorized elections and caucuses is exactly what was found unconstitutional about the Jaybird primaries in *Terry v. Adams*. There, the real election took place in the private Jaybird club, rendering the state run primary election

meaningless. Fowler's edict to state parties to disregard the results of state-authorized primaries and caucuses, and the district court's sanction of that action, has given the Jaybirds new wings. Further, by creating a sanctuary from the Voting Rights Act in national Party rules, the district court has created a paradoxical situation. Changes in voting and candidacy requirements, such as those in this case, clearly require preclearance when implemented in covered jurisdictions. However, under the district court's ruling, the Democratic Party can evade the preclearance requirement by promulgating those changes as national Party rules. This gives the Democratic National Committee the power to coerce state parties into violating state law and the Voting Rights Act.

Contrary to Justice McReynolds and those who would resurrect his arguments today, the gravaman of the First Amendment is the right shared by voters and candidates to speak, associate, and campaign for public office on an even playing field. *Williams v. Rhodes*, 393 U.S. 23, 30 (1968), *Anderson v. Celebreeze*, 460 U.S. 780, 787 (1987), quoting *Bullock v. Carter*, 405 U.S. 134 (1972). As then Chief Judge of the District of Columbia Circuit Court Abner Mivka has noted, "[t]he government of any democracy, let alone one shaped by the values of our Constitution's first amendment, must avoid tilting the electoral playing field, lest the democracy itself become tarnished. *Fulani v. Brady,* 935 F.2d 1324, 1337 (D.C. Cir. 1991). In this case, an entrenched political party bureaucracy forgot these actual principles, essential to free government, and jeopardized one of the most essential features of the Voting Rights Act in the process: Section 5' s requirement that political party rules which effect voting must be precleared.

Conclusion

Section 5 of the Voting Rights Act clearly applies to the political party rules at issue in this case, and that application is constitutional. The Democratic Party Appellees' arguments to the contrary are without merit and the district court's decision endorsing those arguments should be summarily reversed.

Respectfully submitted,

James R. Mann
Counsel of Record
102 West Stone Avenue
Greenville, S.C. 29601
(864) 271-2992
Fax: (864) 271-2999

DEMOCRATIC PARTY OFFICIALS AND MEMBERS REPRESENTED AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

Syed A. Ahsani
Chairman, American
Muslim Alliance-Texas
Arlington, Tx.

Lee Alcorn
President Dallas N.A.A.C.P.
Dallas, Tx.

Helen G. Alexander
County Democratic
Committee
Frederick, Md.

James Barnett
Northwest Alabama
Chairman, Coalition of
Black Trade Unionists
Florence, Al.

James L. Bevel
Minister
Chicago, Ill.

Mary Borawski
Democratic State Central
Committee
Frederick, Md.

Jim Boren
Author
Tahlequah, Ok.

Bernard Broussard
Co-Founder Louisiana
Human Releations Council
Franklin, La.

Rose Broussard
Co-Founder Louisiana
Human Relations Council
Franklin, La.

Louis Byrd
Mayor
Lynwood, Ca.

Raphael Cassimere, Jr.
Professor of History
New Orleans, La.

Ben Chaney
President, James Earl
Chaney Foundation
New York, N.Y.

J.L. Chestnut, Jr.
Attorney
Selma, Al.

Angelo J. Citron
Trustee
Village of Haverstraw, N.J.

William Clark
State Representative
Pritchard, Al.

Clarence Davis
State Delegate
Baltimore, Md.

Walter Dawson
E. Baton Rouge Parish
Democratic Exec. Cttee.
Baton Rouge, La.

Max Dean
Attorney
Flint, Mi.

Michael V. Dobson
State Delegate
Baltimore, Md.

John Dow
U.S. Congress (ret.)
Grand View, N.Y.

Mervyn M. Dymally
U.S. Congress (ret.)
Los Angeles, Ca.

Floyd Fullen
State Delegate (ret.)
Shinston, W. Va

Robert T. Goodwin, Sr.
Housing Authority
Commission
Tuskegee, Al.

Andrew Hayden
State Representative
Uniontown, Al.

Fred Huenefeld, Jr.
La. State Democratic
Central Committee
Monroe, La.

Howard Hunter
State Representative
Murfreesboro, N.C.

Thomas Jackson
State Representative
Thomasville, Al.

John D. Jefferies
State Senator (ret.)
Baltimore, Md.

Joe Jones
City Councilman
Cleveland, Oh.

Rev. William A. Jones
Bethany Baptist Church
Brooklyn, N.Y.

Henry Julien, Jr.
Attorney
New Orleans, La.

James N. Mays
Lee County Commissioner
Albany, Ga.

William H. McCann
State Representative (ret.)
Dover, N.H.

Eugene J. McCarthy
U.S. Senate (ret.)
Woodville, Va.

Sharon McPhail
Past Pres. Natl. Bar Assoc.
Detroit, Mi.

Rhine McLin
State Senator
Dayton, Oh

M. Mike McNair
Publisher, Buckeye Review
Youngstown, Oh.

Bryant Melton
State Representative
Tuscaloosa, Al.

Sylvia L. Montenegro
Mayor
Coachella, Ca.

Noemi Lopez Morales
Mayor Pro-tem
Alvin, Tx.

Ted Moreno
Council Member
Santa Ana, Ca.

Ira Murphy
General Sessions Judge (ret)
Memphis, Tn.

Melvin Muhammad
Chair, Nebraska Assoc.
Public Employees
Omaha, Ne.

Joe Neal
State Senator
Las Vegas, Nv.

George Perdue
State Representative
Birmingham, Al.

Angel L. Perez
1st V.P., Community School Board #12
New York, N.Y.

Wendell Phillips
State Delegate
Baltimore, Md.

Clifton E. Reed
Chairman Education Committee, Merrimack Valley Branch N.A.A.C.P.
Boston, Ma.

William Ferguson Reed, M.D.
General Assembly (ret.)
Richmond, Va.

Edward Roberts
Executive Council, United Teachers of New Orleans
New Orleans, La.

Amelia Boynton Robinson
Civil Rights Activist
Tuskegee Institute, Al.

Edward Robinson
City Council
Florence, S.C.

John W. Rogers, Jr.
State Representative
Birmingham, Al.

Rev. John L. Russell
Member, Ouachita Parish School Board
Monroe, La.

Raymond Scott
National Board of Directors, N.A.A.C.P.
Port Arthur, Tx.

Eliot Shavin
Supervising Attorney
S.M.U. Legal Clinic
Dallas, Tx.

Kenneth Smith
N.A.A.C.P.
Toledo, Oh.

Charles Steel
State Senator
Tuscaloosa, Al.

Ann Stevens
Mayor
Carlisle, S.C.

James L. Thomas
State Representative
Selma, Al.

Leon Todd
School Board (ret.)
Milwaukee, Wi.

Stanley E. Tolliver, Sr.
Attorney
Cleveland, Oh.

Eddie L. Tucker
City Councilman
Talladega, Al.

James Tucker
Publisher African American
Voice
Colorado Springs, Co.

Roger Wells
Business Manager
Laborers International
Union Local 1099
Cleveland, Oh.

Dr. Archie Weston, Sr.
Past Pres., Natl.. Bar Assoc.
Chicago, Ill.